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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,028	11/21/2003	Randy D. Jester	1725 (TI-02-3)	3210
40256	7590	11/29/2006	EXAMINER	
FERRELLS, PLLC P. O. BOX 312 CLIFTON, VA 20124-1706			MIGGINS, MICHAEL C	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/720,028

Applicant(s)

JESTER, RANDY D..

Examiner

Michael C. Miggins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

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DETAILED ACTION

1. In view of the Appeal Brief filed on 8/7/06, PROSECUTION IS HEREBY REOPENED. New grounds for rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Jennifer McNeil.

REJECTIONS REPEATED

2. All of the rejections repeated in the final rejection of 10/5/05, page 2, paragraph 2 are repeated for the reasons of record.

Examiner's Comments

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3. Prosecution has been re-opened in order to apply the newly translated JP reference JP 05271484. Applicant may reinstate the appeal in response to this office action including any and all arguments with regard to the repeated rejections above.

Applicant uses the phrase "consisting essentially of" throughout the claims. When an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964). For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See, e.g., PPG, 156 F.3d at 1355, 48USPQ2d at 1355 ("PPG could have defined the scope of the phrase consisting essentially of for purposes of its patent by making clear in its specification what it regarded as constituting a material change in the basic and novel characteristics of the invention."). See also *In re Janakirama-Rao*, 317 F.2d 951, 954, 137 USPQ 893, 895-96 (CCPA 1963).

NEW REJECTIONS

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 05271484 (English translation provided herein).

All paragraph numbers referenced with regard to JP 05271484 are found in the English translation provided herein.

JP 05271484 discloses a heat-sealable film suitable for heat sealing at low temperatures (paragraphs [0062] – [0063]) comprising at least one layer consisting essentially of a cycloolefin copolymer (COC) (since the acyclic olefin is present at 2%, paragraph [0003]), wherein the COC has a Tg of from about 30 to about 55 degrees C (since the Tg has a common end point of 30, paragraph [0003], paragraph [0012]), further including an acyclic olefin (paragraph [0003]), wherein the COC is norbornene (paragraph [0010]), wherein the acyclic olefin is selected from the group consisting of ethylene, propylene, butylenes and mixtures thereof (paragraph [0005]) (applies to instant claims 1-7 and 30).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 8-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 05271484 (English translation provided herein) in view of Hirose (US 5532030).

JP 05271484 fails to disclose multi-layer laminates comprising the COC and a thermoplastic which is polyester, polypropylene, polyethylene or nylon, wherein the laminate is further heat sealed to another layer via the heat sealable COC layer.

Hirose discloses a multi-layer laminates comprising the COC and a thermoplastic which is polyester, polypropylene, polyethylene or nylon, wherein the laminate is further heat sealed to another layer via the heat sealable COC layer (column 31, lines 36-52, column 35, line 30 through column 42, line 31, Tables 1-3) for the purpose of providing multi-layer packaging with improved interlayer adhesion, mechanical strength and heat sealing (column 35, lines 1-19).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided multi-layer laminates comprising the COC and a thermoplastic which is polyester, polypropylene, polyethylene or nylon, wherein the laminate is further heat sealed to another layer via the heat sealable COC layer in JP 05271484 in order to provide improved interlayer adhesion, mechanical strength and heat sealing.

8. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 05271484 (English translation provided herein) in view of Hirose (US 5532030) in view of Hirose (US 5532030) and Hausmann (US 20020156195).

JP 05271484 discloses a heat-sealable film suitable for heat sealing at low temperatures (paragraphs [0062] – [0063]) comprising at least one layer consisting essentially of a cycloolefin copolymer (COC) (since the acyclic olefin is present at 2%, paragraph [0003]), wherein the COC has a Tg of from about 30 to about 55 degrees C (since the Tg has a common end point of 30, paragraph [0003], paragraph [0012]).

JP 05271484 fails to disclose a method of heat sealing comprising providing a first COC film wherein the COC has a Tg of from about 30 to about 55 degrees C, providing a second COC film wherein the COC has a Tg of from about 30 to about 55 degrees C, heat sealing the first and second films together wherein the sealing temperature is from about 50 to about 80 degrees C.

Hirose discloses a method of heat sealing comprising providing a first COC film wherein the COC has a Tg of from about 30 to about 55 degrees C, providing a second COC film wherein the COC has a Tg of from about 30 to about 55 degrees C, heat sealing the first and second films together (column 3, lines 59-63, column 31, lines 8-22, column 32, lines 25-65) for the purpose of providing improved interlayer adhesion, mechanical strength and heat sealing.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a method of heat sealing comprising providing a first COC film wherein the COC has a Tg of from about 30 to about 55 degrees C, providing a second COC film wherein the COC has a Tg of from about 30 to about 55 degrees C, heat sealing the first and second films together in JP 05271484 in order to provide improved interlayer adhesion, mechanical strength and heat sealing.

Hausmann discloses a COC sealing layer with a heat seal temperature of 50 to 80 degrees C (paragraph [0028], [0063] – [0065]) for the purpose of providing highly performing peel blend for easy opening applications.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a heat seal temperature of 50 to 80 degrees C in JP 05271484 in order to provide highly performing peel blend for easy opening applications.

9. Claims 19-24 and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 05271484 (English translation provided herein) in view of Hirose (US 5532030) in view of Hausmann (US 20020156195).

JP 05271484 fails to disclose a heat seal temperature of 50 to 80 degrees C.

Hausmann discloses a COC sealing layer with a heat seal temperature of 50 to 80 degrees C (paragraph [0028], [0063] – [0065]) for the purpose of providing highly performing peel blend for easy opening applications.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a heat seal temperature of 50 to 80 degrees C in JP 05271484 in order to provide highly performing peel blend for easy opening applications.

The hot strength values recited in claims 19-23 and 26-30 are provided upon the combination of JP 05271484 and Hausmann since JP 05271484 discloses a an end point Tg of 30 for the COC and Hausmann discloses a sealing temperature of 80

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degrees C. Furthermore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided the recited hot tack strength values in order to provide improved heat sealing.

10. Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 05271484 (English translation provided herein) in view of Hirose (US 5532030), as applied to claims 8-17 above, and further in view of Hausmann (US 20020156195).

JP 05271484 fails to disclose a heat seal temperature of 50 to 80 degrees C.

Hausmann discloses a COC sealing layer with a heat seal temperature of 50 to 80 degrees C (paragraph [0028], [0063] – [0065]) for the purpose of providing highly performing peel blend for easy opening applications.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a heat seal temperature of 50 to 80 degrees C in JP 05271484 in order to provide highly performing peel blend for easy opening applications.

2.

Conclusion

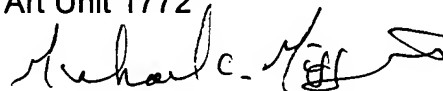
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael C. Miggins
Primary Examiner
Art Unit 1772



MCM
November 27, 2006



JENNIFER MCNEIL
SUPERVISORY PATENT EXAMINER
11/27/06